



AN ACT PROVIDING SMALL BUSINESSES WITH AN OPPORTUNITY FOR WORKERS' COMPENSATION RELIEF BY ALLOWING POOLED RISK SAFETY GROUPS IN WORKERS' COMPENSATION PLAN NO. 3; PROVIDING AN OPPORTUNITY FOR A RETURN ON PREMIUM BASED ON REDUCED LOSSES TO EMPLOYERS THAT IMPLEMENT CERTAIN SAFETY AND RETURN-TO-WORK PROVISIONS; AMENDING SECTION 39-71-2311, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, Workers' Compensation Plan No. 3, an insurer for all businesses in Montana, is a nonprofit, independent, public corporation that nevertheless is a creation of the state; and

WHEREAS, more than 90% of businesses in Montana have fewer than 20 employees and more than 80% of businesses in Montana have fewer than 10 employees, with many if not most of these small businesses obtaining workers' compensation insurance from the State Fund because not all private insurers write for small businesses; and

WHEREAS, Montana's workers' compensation rates among all insurers are the second highest in the nation and the current economic crisis has the potential to hit all employers hard, but especially small businesses that may have fewer lifelines for survival than larger businesses; and

WHEREAS, the opportunity to pool risk in a group that has made a commitment to safety yields the potential to benefit small businesses by reducing losses and possibly generating a return on premium.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Workplace safety program. (1) An employer that is not eligible for the tier with the lowest-rated premium for workers' compensation purposes is eligible to join a state fund pooled risk safety group, as provided in [section 2], if the employer:

(a) adopts and maintains a written, comprehensive workplace safety program that has been in place for more than 1 year and that meets the criteria established by rule implementing Title 39, chapter 71, part 15.

(b) adopts transitional and return-to-work programs;

(c) has at least 3 years of experience without losses;

(d) uses available safety consultation services or programs offered by the department or the state fund.

Safety consultation may be provided to individual employers or to groups. The department and the state fund shall notify each employer in a group, as provided in [section 2], regarding the availability of safety and return-to-work resources.

(e) complies with the terms and conditions of the state fund pooled risk safety group as provided in [section 2].

(2) The state fund and the department shall share information on workplace safety programs and transitional and return-to-work programs.

Section 2. Pooled risk safety group. (1) The state fund may establish one or more groups of individual policies in a pooled risk safety group to promote safety as a way to reduce losses among members of the pooled risk safety group.

(2) Each member of a pooled risk safety group must be eligible as provided in [section 1] and must have an individual workers' compensation plan No. 3 policy. An individual policy may be included in only one group.

(3) The state fund shall annually establish the terms and conditions of the plan that defines the requirements of participation for a pooled risk safety group. The plan must include the criteria to be eligible for an aggregate return of premium and a method for apportioning the return of premium among members of the group.

(4) The aggregate record of the individual members of the pooled risk safety group is the basis for determining if the members of the pooled risk safety group qualify for a return on premiums.

Section 3. Section 39-71-2311, MCA, is amended to read:

"39-71-2311. Intent and purpose of plan -- expense constant defined. (1) It is the intent and purpose of the state fund to allow employers an option to insure their liability for workers' compensation and occupational disease coverage with the state fund. The state fund must be neither more nor less than self-supporting. ~~Premium~~ Premium rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort

to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. The prediction must take into account the goal of pooling risk and may not place an undue burden on employers that are not eligible for the tier with the lowest-rated premium for workers' compensation purposes.

(2) Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, the board of directors may implement multiple rating tiers as provided in 39-71-2330 and may assess an expense constant, a minimum premium, or both.

~~(2)~~(3) As used in this section, "expense constant" means a premium charge applied to each workers' compensation policy to pay expenses related to issuing, servicing, maintaining, recording, and auditing the policy."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 1 and 2].

Section 5. Effective date -- applicability. [This act] is effective July 1, 2009, and applies to groups formed on or after July 1, 2010.

- END -

I hereby certify that the within bill,
SB 0192, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 192

INTRODUCED BY R. ZINKE, LASLOVICH

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